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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,058	01/17/2006	Christoph Grudler	1746-16	4561
24106 7590 11/22/2010 EGBERT LAW OFFICES 412 MAIN STREET, 7TH FLOOR HOUSTON, TX 77002				
EXAMINER				
STUART, COLIN W				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
11/22/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/531,058

**Applicant(s)**

GRUNDLER ET AL.

**Examiner**

COLIN STUART

**Art Unit**

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2010.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25 and 26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 25 and 26 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 12 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is in response to the request for continued examination filed 10/7/10 and the subsequent filed claim amendments dated 10/21/10. As directed by the amendment claims 25-26 have been amended and no claims have been cancelled or added. As such, claims 25-26 are pending in the instant application.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**3. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobritz (4,010,748) in view of Jackson (4,026,285) and Stueble (5,497,628).**

In regards to claim 1, Dobritz shows a system for heating and humidifying a gas for delivery to a patient which includes a fluid reservoir 9 having a fluid therein (see Fig. 1); a humidification chamber 4 in fluid communication with the fluid reservoir (see Fig. 1), the chamber having a gas inlet (connection from reference numeral 1 in Fig. 1) and a gas outlet (connection with reference numeral 19 in Fig. 1), the gas inlet being at a lower portion of the chamber and the gas outlet position at a level above the gas inlet (see Fig. 1), the humidification chamber having a filling material 6 therein positioned between the gas inlet and the gas outlet; a pumping means 10 connected to the fluid reservoir and to the humidification chamber (see Fig. 1) for passing the fluid from the fluid reservoir into the humidification chamber; a gas supplying means 3 connected to the gas inlet of the humidification chamber for passing a gas through the gas inlet and into the humidification chamber such that gas flows outwardly of the humidification chamber through the gas outlet; and a heating means 11 cooperative with the fluid in the fluid reservoir for elevating a temperature of the fluid in the reservoir to a desired level. The Dobritz system is silent as to the humidification chamber having a distribution chamber in an upper portion with a sieve bottom and filling material positioned below a sieve bottom of a distribution chamber. However, Jackson teaches a humidification chamber system which includes a distribution chamber in an upper portion of a humidification chamber (see Jackson Fig. 1; space where the fluid outlet 28 delivers fluid to the chamber) and a sieve bottom (26 Jackson Fig. 1) with filling material (23 Jackson Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dobritz system's humidification chamber by

including a distribution chamber with sieve bottom and filling material positioned below the sieve bottom as taught by Jackson so that "all surfaces of the humidifier are shown exposed to the water" (Jackson abstract ln. 7-8). The now modified Dobritz device's pumping means passes fluid from the fluid reservoir into a distribution chamber above a sieve bottom such that the fluid flows downwardly through the sieve bottom and into and through the filling material such that gas flows (via inlet connection from reference numeral 1 in Fig. 1 of Dobritz) in a direction opposite to a direction in which fluid flows through the filling material such that the fluid is moved through the gas so as to saturate the gas with fluid without aerosol formation. Note that the gas flows from conduit (1 Dobritz Fig. 1) through the chamber to Y-piece (14 Dobritz) while fluid is pumped from reservoir to the distribution portion (Jackson Fig. 1 space where the fluid outlet 28 delivers fluid to the chamber) and flows through the sieve bottom and through the filling material (see Jackson Fig. 1) of the humidification chamber (Jackson 4). The now modified Dobritz device is silent as to including a respiratory gas flow generator being connected to the gas outlet and positioned between the gas outlet and the patient. However, Stueble teaches a humidification system which a respiratory gas flow generator is connected to a gas outlet of a humidification chamber positioned between the outlet and the patient (i.e. downstream of the humidification chamber see Stueble col. 6 ln. 45-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Dobritz device to include a respiratory gas flow generator connected between a gas outlet of a humidification chamber and the patient as taught by Stueble in order to "provide for a ventilator to suck the air stream

through the humidification zone" (see Stueble) giving greater control of the respiratory gas flow.

In regards to claim 26, the modified Dobritz system's humidification chamber and fluid reservoir are connected by a fluid circuit (7 Dobritz Fig. 1) and the pumping means is connected to the fluid circuit.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 25-26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents are considered to be pertinent art: Milewicz (6,010,118), Jackson (4,026,285), and Koch (6,102,037) are all related to systems for heating and humidifying a gas for delivery to a patient.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/COLIN STUART/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771